purchase agreements, and these agreements were entered into before 9 October 1984. As the instalments were not paid to the plaintiffs on the due dates, the defendants are obliged to pay them under the master agreement, and it is immaterial whether or not they were paid to Fulsoon; in the circumstances it is certainly not a defence that the amounts had been paid to Fulsoon.

With regard to Part III of the schedule, the first defendant disputed the amounts in terms 4 and 11 thereof on the ground that since the plaintiffs had terminated the master agreement on 23 October 1985, they had resorted to direct collection of the instalments due from the hirer, and yet they 'allowed' the second defendant to collect these instalments in question. All that the schedule says was that these instalments were paid to Fulsoon and there is nothing there to suggest that the plaintiffs 'allowed' Fulsoon to collect them. In my view, the fact that these instalments were paid to the second defendant or Fulsoon is no defence to the claim for these amounts.

In the result, I held that the plaintiffs were entitled to judgment in the sum of $59,728.71, and I so ordered.

Order accordingly.

Solicitors: *Shook Lin & Bok; Lim Ganesh & Liu.*

Reported by *Teoh Ai Lin*

MALAYSIAN REPORTS

Public Prosecutor v Dat ak Tuni

HIGH COURT (KUCHING) — CRIMINAL REVISION NO 2 OF 1990
HAIDAR J
2 OCTOBER 1990

Criminal Procedure — Fitness to plead — Whether accused is of sound mind and capable of making defence — Principles applicable — Whether court need be concerned with state of mind of the accused at the time of offence — Whether accused can be detained in safe custody without a finding that he is of unsound mind and incapable of making a defence — Penal Code (FMS Cap 45), ss 302 & 304 — Criminal Procedure Code (FMS Cap 6), ss 178(iii), 325, 342, 343(i), (ii) & 344

The accused was charged with an offence under s 304 of the Penal Code. He was initially sent to the Sarawak Mental Hospital for observation when a magistrate suspected that he was of unsound mind, after which the Medical Superintendent of the hospital certified that the accused was fit to stand trial and plead in court. However, the sessions court judge, before whom the matter came up, did not take a plea but adjourned the case and requested further details of the accused's previous psychiatric illness and his mental state at the time of the accident. It was again reported that the accused was fit to stand trial. The charge was then put to the accused whereupon he said he understood the charge and did not do it purposely and did not know why he killed his father. The sessions court judge took the view that the accused was unable and incapable of making his defence, and ordered that he be detained in a mental hospital for safe custody under s 344 of the Criminal Procedure Code ('CPC') pending the order of the Yang Di-Pertuan Negeri Sarawak. The deputy public prosecutor then applied to the court to exercise its revisionary powers under s 325 of the CPC in respect of the order made by the sessions court judge.

Held, setting aside the order of the sessions court:

(1) In spite of the first medical report certifying the accused fit to plead, the learned sessions court judge went one step further by saying that 'the mental state of the accused at the time of the alleged offence is relevant', and required further details of the accused's previous psychiatric illness and his mental state at the time of the incident. It would appear therefore that the learned sessions court judge was unduly concerned about the mental state of the accused at the time of the commission of the offence. This is an error. The learned sessions court judge's duty is to inquire into the state of mind of the accused at the time the trial is being held as provided under s 341 of the CPC.

(2) When the case was first mentioned before the sessions court and on the face of the Medical Superintendent's report, the charge should have been read to the accused for the accused to plead. If, however, the learned sessions court judge was of the opinion that the accused was not fit to plead in spite of the report by the Medical Superintendent (presumably because of the lapse of time of the issuance of the report and the trial) she should have invoked s 342 of the CPC.

(3) The plea entered by the accused appears to be equivocal and must be treated as one of not guilty. The court should proceed to try the case as required by s 178(iii) of the CPC. In

the present case, there was no plea entered at all by the accused except that he understood the charge and made other remarks, and there is therefore more compelling reason for the learned sessions court judge to proceed with the case for trial.

(4) Even assuming the accused appeared to be of unsound mind and incapable of making his defence, the learned sessions court judge had no jurisdiction to order the accused to be detained in safe custody under s 344 of the CPC without recording a finding pursuant to s 342 that the accused is of unsound mind and is incapable of making his defence.

(5) It would appear therefore, that if the learned sessions court judge is satisfied that the accused may be of unsound mind and incapable of making his defence and finds accordingly, then only shall she postpone the trial and invoke s 344 of the CPC and order the accused to be detained in safe custody as may be appropriate, otherwise she has no jurisdiction to do so under s 344 of the CPC.

(6) In the circumstances, the learned sessions court judge erred in making the order under s 344 of the CPC, and the order is set aside in the exercise of the court's revisionary powers. The case to be remitted to the sessions court for the plea to be taken in view of the report of the Medical Superintendent, and if the plea is equivocal, to proceed with the trial.

[Bahasa Malaysia summary

Yang tertuduh telah didakwa atas kesalahan di bawah s 304 Kanun Kesiksaan. Pada awalnya beliau telah dihantar ke Hospital Otak Sarawak untuk pemerhatian apabila seorang majistret mengesyaki yang beliau tidak waras. Selepas itu, Penguasa Perubatan hospital itu mengesahkan bahawa yang tertuduh sihat untuk menghadapi perbicaraan dan membuat akuan. Walau bagaimanapun, hakim mahkamah sesyen yang mendengar perkara itu tidak mengambil akuan tetapi menangguhkan kes itu dan meminta butir-butir lanjut tentang kesakitan otak yang tertuduh yang terdahulu dan keadaan mentalnya pada masa kemalangan. Laporan mengesahkan sekali lagi bahawa yang tertuduh sihat untuk menghadapi perbicaraan. Dakwaan itu kemudiannya dikemukakan kepada yang tertuduh dan beliau menyatakan bahawa beliau memahami dakwaan itu tetapi tidak membuatnya dengan niat dan beliau tidak tahu mengapa beliau telah membunuh ayahnya. Hakim mahkamah sesyen membuat keputusan bahawa yang tertuduh tidak boleh membuat pembelaannya dan memerintahkan supaya beliau ditahan di hospital otak untuk tahanan keselamatan di bawah s 344 Kanun Acara Jenayah ('KAJ') sementara menantikan perintah Yang Di-Pertuan Negeri Sarawak. Pendakwa raya kemudiannya memohon kepada mahkamah untuk menjalankan kuasa penyemakannya di bawah s 325 KAJ berkenaan dengan perintah yang dibuat oleh hakim mahkamah sesyen.

Diputuskan, mengenepikan perintah mahkamah sesyen:

(1) Meskipun laporan perubatan yang pertama mengesahkan bahawa yang tertuduh sihat untuk membuat akuan, hakim mahkamah sesyen telah mengambil satu langkah lanjut dengan mengatakan bahawa 'keadaan mental yang tertuduh pada masa kesalahan yang disyaki adalah releven', dan memerlukan butir lanjut tentang kesakitan otak yang tertuduh dan keadaan mentalnya pada masa kejadian itu. Nampaknya hakim mahkamah sesyen terlalu bimbang tentang keadaan mental yang tertuduh pada masa kesalahan itu dilakukan. Ini adalah tidak betul. Tugas hakim mahkamah sesyen untuk menyiasat tentang keadaan mental yang tertuduh pada masa perbicaraan diperuntukkan di bawah s 341 KAJ.

(2) Bila kes itu pertama kali disebut di depan mahkamah sesyen dan memandangkan laporan Penguasa Perubatan, dakwaan itu seharusnya dibaca kepada yang tertuduh untuknya membuat akuan. Jika, walau bagaimanapun, hakim mahkamah sesyen berpendapat bahawa yang tertuduh tidak sihat untuk membuat akuan tidak kira laporan Penguasa Perubatan (mungkin kerana masa antara laporan itu dan perbicaraan) beliau seharusnya memakai s 342 KAJ.

(3) Akuan yang diberikan oleh yang tertuduh nampaknya tidak tentu dan mesti dianggap sebagai satu akuan tidak salah. Mahkamah harus seterusnya membicarakan kes itu seperti yang dikehendaki oleh s 178(iii) KAJ. Dalam kes ini, tidak ada akuan yang dibuat sama sekali oleh yang tertuduh kecuali bahawa beliau memahami dakwaan itu dan membuat beberapa kenyataan yang lain. Jadi terdapat sebab yang mendesak untuk hakim mahkamah sesyen meneruskan kes itu ke perbicaraan.

(4) Biarpun yang tertuduh kelihatan tidak waras dan tidak boleh membuat pembelaannya, hakim mahkamah sesyen tidak ada bidang kuasa untuk memerintahkan yang tertuduh ditahan dalam tahanan keselamatan di bawah s 344 KAJ tanpa merekodkan kesimpulan di bawah s 342 bahawa yang tertuduh tidak waras dan tidak boleh membuat pembelaannya.

(5) Dengan itu, nampaknya jika hakim mahkamah sesyen berpuas hati bahawa yang tertuduh tidak waras dan tidak boleh membuat pembelaannya dan membuat kesimpulan sebegitu, barulah beliau harus menangguhkan perbicaraan dan memakai s 344 KAJ dan memerintahkan yang tertuduh ditahan dalam tahanan keselamatan seperti yang sesuai, jika tidak beliau tidak ada bidang kuasa bertindak di bawah s 344 KAJ.

(6) Dalam keadaan kes ini, hakim mahkamah sesyen telah tersilap apabila membuat perintah di bawah s 344 KAJ, dan perintah itu diketepikan dalam menjalankan kuasa penyemakan mahkamah. Kes itu dihantar balik ke mahkamah sesyen supaya akuan diambil memandangkan laporan Penguasa Perubatan. Jika akuan tidak tentu, kes itu haruslah terus ke perbicaraan.]

Cases referred to

1 *Nabi Ahmad Khan* v *R* AIR 1932 Oudh 190 (folld)
2 *R* v *Driscoll* 20 Cr App R 161 (refd)
3 *Lee Weng Tuck & Anor* v *PP* [1989] 2 MLJ 143 (folld)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) ss 178 (iii), 325, 342, 343(i), (ii), 344
Penal Code (FMS Cap 45) ss 302, 304

Nik Suhaimi bin Nik Sulaiman (Deputy Public Prosecutor) for the Public Prosecutor.
Accused in person.

Cur Adv Vult

Haidar J: The learned deputy public prosecutor wrote to the court to exercise its revisionary powers under s 325 of the Criminal Procedure Code (FMS Cap 6) ('CPC') in respect of an order made by the learned sessions court judge under s 344 of the CPC. I called for the record of the proceedings, and on its perusal, decided to hear the parties. Unfortunately the accused was not represented by counsel.

The accused, Dat ak Tuni, was charged at the first instance in the magistrate's court at Serian for an of-

fence under s 302 of the Penal Code. At the end of the preliminary inquiry on 27 February 1990 the learned magistrate amended the charge to s 304 of the Penal Code (FMS Cap 45). When the case was mentioned on 2 April 1990, the learned magistrate suspected that the accused was of unsound mind and then ordered that he be sent to the Sarawak Mental Hospital for observation for one month under s 342 of the CPC.

On 3 May 1990, the accused was charged before the sessions court at Kuching. On that date, a certificate of the Medical Superintendent (P1) was tendered by the prosecution and P1 certified that the accused is fit to stand trial and to plead in court. However, no plea was taken in spite of P1 and from the notes of the proceedings the learned sessions court judge said:

> However the mental state of the accused at the time of the alleged offence is relevant and in this connection, the court would require further details of the accused's previous psychiatric illness and his mental state at the time of the incident. The court therefore requests for further details of the mental status of the accused at the time of the incident ...

She then ordered that the accused be remanded and adjourned the case to 28 May 1990 pending further details from the doctor.

On 28 May 1990, the doctor submitted his report certifying, as in his previous report (P1), that the accused is fit to stand trial. The charge was then read and explained to the accused and this is what the accused said according to the record of the proceedings:

> I understand the charge. I did not do it purposely. I do not know why I killed my father.

Whereupon, the learned sessions court judge was of the view that the accused is unable and incapable of making his defence and ordered that he be detained in the mental hospital for safe custody under s 344 of the CPC pending the order of the Yang Di-Pertuan Negeri Sarawak.

Section 343(i) of the CPC specifies that if a Medical Superintendent shall certify that the accused is of sound mind and capable of making his defence, the judge shall proceed with the trial. In this case it would appear that in spite of the first medical report (P1) certifying that the accused is fit to plead, the learned sessions court judge went one step further by saying that 'the mental state of the accused at the time of the alleged offence is relevant' and went on further 'the court require further details of the accused's previous psychiatric illness and his mental state at the time of the incident'. It would appear therefore that the learned sessions court judge was *unduly concerned about the mental state of the accused at the time of the commission of the offence.* With respect, I think, she is in error here and to this extent *Mallal's Criminal Procedure* (4th Ed) at p 511 quoting *Nabi Ahmad Khan* v *R*[1] stated:

> The procedure in the case of lunacy at the time of the trial and lunacy at the time of the commission of the offence are entirely separate matters leading to different consequences and these two matters must not be confused together. The first point that a court has to decide when an accused person is brought before it who is suspected or alleged to be a lunatic, and before the court can even proceed with the trial for the offence alleged to have been committed, is whether the accused person appears to the court to be of unsound mind and consequently incapable of making his defence.

Clearly therefore, the learned sessions court judge's duty is to inquire into the state of mind of the accused at the time the trial is being held as provided under s 342 of the CPC. 'Being of unsound mind' must be distinguished from 'being incapable of knowing the nature of the act' under ss 346 and 347 of the CPC. (See p 511 of *Mallal's Criminal Procedure* (4th Ed) and *R* v *Driscoll.*[2])

In my view, when the case was first mentioned before her on 3 May 1990 and in the face of P1, she should have the charge read to the accused and for the accused to plead thereto. If, however, she was of the opinion that the accused was not fit to plead in spite of P1 (presumably because of the lapse of time of the issuance of P1 and the trial) she should invoke s 342 of the CPC and in this case she probably did so, though it is not clear from the record of the proceedings.

When the case was mentioned before her on 28 May 1990, again the Medical Superintendent gave his opinion that the accused is fit to plead and stand trial. The charge was then read and explained to the accused and he understood the charge though he said that he did not do it purposely and he did not know why he killed his father. As the plea appears to be equivocal then in the circumstances, the plea must be treated as one of not guilty and the court shall proceed to try the case as required by s 178(iii) of the CPC. In this respect, Mohamad Azmi SCJ in delivering the grounds of decision of the Supreme Court in the case of *Lee Weng Tuck & Anor* v *PP*[3] at p 146 said:

> It is equally settled practice that where the plea of guilty is equivocal, is where it is not clear, or is doubtful or qualified, the plea must in law be treated as one of not guilty and the court shall proceed to try the case as required by s 178(iii) of the Criminal Procedure Code.

In the present case, in my view, there was no plea at all by the accused except that he understood the charge and made the remarks stated by me earlier and there is therefore more compelling reason for the learned sessions court judge to proceed with the case for trial.

However, even assuming that the accused appeared to be of unsound mind and incapable of making his defence, should the learned sessions court judge invoke s 344 of the CPC in this case and make the order that she did? In my view, she is again in error here as she has

no jurisdiction to order the accused to be detained in safe custody under s 344 of the CPC without recording a finding pursuant to s 343 read with s 342 of the CPC that the accused is of unsound mind and incapable of making his defence. Section 343(ii) of the CPC reads:

> If the Medical Superintendent shall certify that such person is of unsound mind and incapable of making his defence the Court shall, if satisfied of the fact, find accordingly, and thereupon the inquiry or trial, as the case may be, shall be postponed.

It would appear, therefore that if the learned sessions court judge is satisfied that the accused may be of unsound mind and incapable of making his defence and finds accordingly, then only shall she postpone the trial and invoke s 344 of the CPC and order the accused to be detained in safe custody as may be appropriate, otherwise she has no jurisdiction to do so under s 344 of the CPC (see *Sohoni's Code of Criminal Procedure* (17th Ed) Vol 3 at p 2959).

In the circumstances, the learned sessions court judge erred in making the order under s 344 of the CPC and in exercise of my revisionary powers, I set it aside. I order that the case be remitted to the sessions court for the plea to be taken in view of the report of the Medical Superintendent and if the plea is equivocal to proceed with the trial. It is only after the sessions court has made a finding under s 343 read with s 342 of the CPC, can the sessions court invoke s 344 of the CPC.

Order accordingly.

Reported by *Azra Moiz*

Sarawak Building Supplies Sdn Bhd v Director of Forests & Ors

HIGH COURT (KUCHING) — SUIT NO KG 40 OF 1990
HAIDAR J
2 OCTOBER 1990

Civil Procedure — Commencement of proceedings on behalf of company — Authority of solicitors — Burden of proof

Civil Procedure — Estoppel — Defendants challenging authority of solicitors to commence proceedings on behalf of company — Solicitors contending that joint-managing director of company had authorized them to commence proceedings — Defendants contending that no resolution of directors authorizing commencement of action had been passed — Defendants also contending that constitution of board of directors was invalid as against defendants — Whether defendants estopped from denying authority of joint-managing director

Civil Procedure — Parties — Action to redress wrong done to company or to recover money or damages due to it — Proper plaintiff

Companies and Corporations — Directors — Authority — Commencement of legal proceedings — Authority of director to commence proceedings in name of company — Agent of necessity — Whether power to commence proceedings delegated

Companies and Corporations — Resolution — Meetings of directors — Quorum — Absence from meeting of directors from certain group — Articles of association requiring presence of director from that group to form quorum — No 'disinterested' quorum present — Whether resolution valid

Companies and Corporations — Meetings — Quorum — Non-compliance with articles — No disinterested quorum — Allegation in legal proceedings that meeting of directors held in absence of certain directors contrary to articles of association — Absent directors not intervening to raise allegation — Allegation made by stranger to company — Absent directors interested in subject matter of resolution passed at meeting — Whether resolution valid

Companies and Corporations — Non-compliance with regulations of company — Powers of court — Whether court should intervene

An action was commenced in the name of the plaintiff company challenging the decision of the first defendant acting on the direction of the second defendant to revoke a forest timber licence granted to the plaintiff company. The decision was taken following the reconstitution of the shareholding of the plaintiff company. The reconstitution was not accepted by the first and second defendants who said that this was undertaken without the approval of the licensing authority in contravention of s 2(2)(d) of the Forest Ordinance (Cap 126) of Sarawak. The shareholding was reconstituted following a joint-venture agreement which resulted in additional parties taking up shares in the plaintiff company and additional directors being appointed to the board of directors of the plaintiff company.

The defendants applied for an order, inter alia, that the action be struck out or dismissed or stayed on the following grounds:

(1) that no authority had been given by the board of directors of the plaintiff company and/or the majority of its shareholders for the action to be commenced in the name of the plaintiff company;